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QUESTION PRESENTED

Whether both courts below erred in holding that a shipowner was not under an absolute duty to furnish a seaman with a safe place to work, absent proof of negligence or unseaworthiness on the part of the ship.

STATUTES INVOLVED

The pertinent provisions of Section 33 of the Jones Act (41 Stat. 1007, 46 U. S. C. 688) and Section 1 of the Federal Employers' Liability Act (35 Stat. 65, 45 U. S. C. 51) are set forth in the Appendix, *infra*, p. 11.

STATEMENT

The suit was instituted by petitioner in the District Court for the Eastern District of Pennsylvania by a libel *in personam* against the United States as owner of the steamship *Rufus W. Peckham* (R. 3a–10a). Petitioner's libel sought to recover damages of $50,000 for injuries to his left leg (R. 7a).[1] The pertinent facts, as found by the district court, are as follows (R. 114a–115a): Petitioner, a cook on board the *Rufus W. Peckham,* was descending a stairway leading to the chill box to get some food for the crew when he slipped upon a blob of Jello, and was injured. The stairway was used by galley men to carry

[1] Petitioner made a further claim to maintenance and cure. The district court awarded petitioner maintenance and cure for a period of twenty months (R. 121a), and this was affirmed by the court below. There is no dispute here as to that award.

food from the chill box to the galley, and was properly constructed and properly lighted. There was no direct evidence as to how or when the Jello got upon the step.

The ship was lying in port at the time of the accident. Petitioner's wife and little girl were on board, but it does not appear whether other persons not members of the crew were also on board at the time or had been shortly before.

The libel asserted as its basis both the unseaworthiness of the vessel and the negligence of the members of the crew (R. 4a). The district court held that the evidence failed to establish either unseaworthiness or negligence (R. 115a). Petitioner contended, however, that included in the shipowner's absolute duty to furnish a seaworthy ship was the duty to furnish a safe place to work. This contention was denied. "If," said the district court, "the place where a seaman works is unsafe that is a fact which may establish that the ship was unseaworthy or that the employees were negligent, but I find no basis for holding that there is a third and separate ground of liability in this regard" (R. 116a). Accordingly, the district court entered a decree denying petitioner's claim for damages (R. 121a). On appeal, the Court of Appeals for the Third Circuit (one judge dissenting) affirmed, holding that there was no showing of negligence on the part of the ship's officers, and that "the doctrine of unseaworthiness does not extend so far as to require

(Pet. 3, 5, 9, 14, 15). In the former, a seaman was injured by a fall from a staging which gave way when a defective rope supporting it parted. The rope was an essential part of the ship's gear and rendered the staging an unseaworthy appliance. Similarly, in the *Carlisle* case, one of the vessel's appliances was inherently defective. There a motorboat was held to be unseaworthy because it left dock, in waters where there prevailed a custom to start galley fires by means of coal oil, with a can marked "coal oil," but filled with gasoline.

Petitioner cites excerpts from *The Seeandbee,* 102 F. 2d 577, 581 (C. A. 6) and the *Mahnich* case, 321 U. S. at 102, to support his contention that a shipowner has an absolute duty to provide a safe place to work, derived from the duty to furnish a seaworthy ship (Pet. 13, 15). These excerpts, however, as noted by the district court (R. 117a), "do not seem to be more than somewhat inexact expressions used in cases, in each of which the cause of action sustained was plainly either negligence or unseaworthiness." Thus, in the *Seeandbee* case, the shipowner was held to have breached his warranty of seaworthiness by his failure to take an obvious safety precaution—a pump with rapidly moving parts was allowed to remain unguarded near a narrow passageway. And, as we have already seen, *supra,* recovery was allowed in the *Mahnich* case because of an inherently defective appliance, which rendered

the vessel unseaworthy. Compare *Beadle* v. *Spencer,* 298 U. S. 124, a case under the Jones Act, in which, although the Court spoke of the owner's failure to provide a safe place to work, recovery was plainly allowed because of the shipowner's negligence, consisting in failure to use due care in piling loose lumber near a hatch.

Moreover, the safe place to work requirement—the formulation developed in the nonmaritime law of negligence upon which petitioner heavily relies—creates no insurer's liability in an employer. Where applicable, that principle does not impose an absolute duty in the shipowner or employer to furnish a safe working place, but a duty to exercise reasonable care to that end. See *Delaware, L. & W. R. R. Co.* v. *Koske,* 279 U. S. 7, 10; *Baltimore & Ohio S. W. R. Co.* v. *Carroll,* 280 U. S. 491, 496; *McGivern* v. *Northern Pacific Ry. Co.,* 132 F. 2d 213, 217 (C. A. 8). Were the Court to accept petitioner's contention, the shipowner, as noted by the court below, would become "an insurer against every fortuitous or negligent act on shipboard which results in temporarily rendering an appliance less than safe even though he may have no knowledge of or control over its happening, and without giving him a reasonable opportunity, such as is afforded by the safe place to work doctrine of the law of negligence, to correct the condition before he becomes liable for it." 184 F. 2d at 215. The courts have consistently refused, however, to make the shipowner

an insurer of the seaman's safety under the maritime law. See, *e. g., The Baymead,* 88 F. 2d 144 (C. A. 9); *The Tawmie,* 80 F. 2d 792, 793 (C. A. 5); *The Cricket,* 71 F. 2d 61 (C. A. 9); *Adams* v. *Bortz,* 279 Fed. 521, 525 (C. A. 2).

2. Petitioner's second contention (Pet. 16–18) is based upon Section 33 of the Jones Act (46 U. S. C. 688), which incorporates by reference Section 1 of the Federal Employers' Liability Act (45 U. S. C. 51). The latter act provides, *inter alia,* that the carrier shall be liable in damages to an employee for any injuries "resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier * * *." Relying on this provision, petitioner asserts that "the Court below should have applied the rule which holds a shipowner liable for the negligent acts of its servants in creating an unsafe condition * * *" (Pet. 17). This argument, properly rejected in both courts below, is based upon two incorrect premises.

Petitioner assumes that the Jello could only have been deposited on the stairway by one of his fellow employees. This is not warranted, for the record shows that at least two persons not members of the crew, petitioner's wife and child, were aboard (R. 114a). For all that appears in the record, there may have been other persons on board who were not attached to the ship. The factual situation here, therefore, is clearly distinguishable from that in *Adams* v. *American Presi-*

dent Lines, 23 Cal. 2d 681, 1944 A. M. C. 550, the sole case cited in support of this aspect of the petition (Pet. 17). In that case the Supreme Court of California allowed a seaman to recover under the Jones Act for injuries sustained when he slipped on an orange peel on a stairway. It was undisputed, however, that the stairway was inaccessible to any but members of the crew. *Id.* at 684, 1944 A. M. C. at 551.

Petitioner's second assumption is that the shipowner is necessarily liable for the act of an employee in depositing Jello on the stairway. This assumption is patently untenable, for it rules out the possibility that the Jello was deposited by a seaman without the scope of his employment, in which event the owner would not be liable. See, *e. g. Davis* v. *Green,* 260 U. S. 349; *Hoyt* v. *Thompson,* 174 F. 2d 284 (C. A. 7); *In re Southern Pacific Co.,* 30 F. 2d 723 (S. D. N. Y.), affirmed, 30 F. 2d 725 (C. A. 2).

In any event, petitioner must fail in this aspect of his argument. Both courts below found that there was not sufficient evidence to establish negligence, and this Court, in admiralty as well as other cases, will not disturb the concurrent findings of fact of both courts below unless they are shown to be clearly erroneous. *Just* v. *Chambers,* 312 U. S. 383, 385; *Piedmont Coal Co.* v. *Seaboard Fisheries Co.,* 254 U. S. 1, 13; *Luckenbach* v. *McCahan Sugar Co.,* 248 U. S. 139, 145; *The Wildcroft,* 201 U. S. 378, 387; *The Iroquois,* 194 U. S.

240, 247. We submit that the finding of the courts below that there was no proof of negligence is not only correct, it is the only finding supportable by the record.

This aspect of petitioner's argument is but another attempt, in this instance in reliance on the Jones Act, to make the shipowner an insurer of a seaman's safety. Relief has been consistently denied the seaman, however, when he fails to sustain the burden of proving negligence on the part of the ship, its officers or seamen. *E. g., DeZon* v. *American President Lines,* 318 U. S. 660; *Delaware, L. & W. R. R. Co.* v. *Koske,* 279 U. S. 7; *Boyce* v. *Seas Shipping Co.,* 152 F. 2d 658 (C. A. 2); *Roberts* v. *United Fisheries Vessels Co.,* 141 F. 2d 288 (C. A. 1), certiorari denied, 323 U. S. 753; *Brittingham* v. *Ore S. S. Corp.,* 62 F. 2d 616 (C. A. 4).

CONCLUSION

The decision of the court below is clearly correct and there is no conflict of decisions. The petition for a writ of certiorari should therefore be denied.

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JANUARY 1951.

APPENDIX

Section 33 of the Jones Act (41 Stat. 1007, 46 U. S. C. 688) provides:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

Section 1 of the Federal Employers' Liability Act (35 Stat. 65, 45 U. S. C. 51), incorporated by reference into Section 33 of the Jones Act, provides in pertinent part:

> Every common carrier by railroad * * * shall be liable in damages to any person suffering injury * * * resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier * * *.

U. S. GOVERNMENT PRINTING OFFICE: 1951